

REGULATION

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| SPDOC No.: 04-17 | Effective Date: August 1, 2004 | Index Reference: Drug Testing | Regulation Number: 2.10 |
| Issuing Bureau: Executive | Rule Reference: Rule: 2-7 (Drug and Alcohol Testing) | | Replaces: New |
| Subject: DRUG TESTING COMPLAINTS BY NON-EMPLOYEES | | | |

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1. PURPOSE

This regulation establishes the procedures for a person not currently employed in the classified service to challenge the rescission of a conditional offer of employment after failing a preemployment drug test.

2. CIVIL SERVICE COMMISSION RULE REFERENCE

Rule 2-7 Drug and Alcohol Testing

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2-7.4 Penalties

* * *

(b) New hires.

- (1) Rescission of conditional offer of employment. If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing*

authority must rescind the conditional offer of employment in writing. The written rescission must include notice of the complaint procedure and the 14-day time limit provided in subsection (b)(2). A person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.

- (2) Complaint by applicant.** *If a person claims that the rescission of the person's conditional appointment as authorized by subsection (b)(1) was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the person may file a written complaint with the state personnel director.*
- (A)** *A complaint must be received by the state personnel director within 14 calendar days after the appointing authority mailed the written notice of the rescission of the conditional offer of employment and this complaint procedure. The person must also file a copy of the complaint with the appointing authority.*
- (B)** *The director shall review the complaint and issue a decision under procedures authorized in the regulations.*
- (C)** *If the director determines that the rescission was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the director may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.*
- (D)** *Either the person or the appointing authority may appeal the director's final decision to the civil service commission.*

3. STANDARDS

A. Rescission.

As required in rule 2-7.4(b)(1), an appointing authority shall rescind a conditional offer of employment made to any person not currently employed in the classified service who (1) fails or refuses to submit to a preemployment drug test, (2) interferes with a drug testing procedure, or (3) tampers with a drug testing sample. The rescission must be in writing and include notice of the right to file a written complaint with the State Personnel Director within 14 calendar days after the date the rescission notice is mailed.

B. Complaint.

- 1. Filing Requirements.** A person whose conditional offer of employment is rescinded as authorized in rule 2-7.4(b)(1) may file a complaint with the State Personnel Director. The person may represent himself or herself or be represented by an attorney. The complaint must be received by the State Personnel Director within 14 calendar days after

the date the appointing authority mailed its written notice of rescission to the complainant. The complainant shall also serve a copy of the complaint on the appointing authority.

2. **Late Complaint.** If the complaint is filed late, the provisions of regulation 8.06 [Computing Time and Filing Documents], section 5, apply.
3. **Contents of Complaint.** The complaint must contain the name, address, telephone number, and signature of the complainant. If the complainant is represented by an attorney, the complaint must also contain the name, address, telephone number, and signature of the attorney. The complaint must contain (1) a copy of the rescission letter, (2) a concise factual summary, and (3) an explanation of how the rescission violated Article 11, §5, of the Michigan Constitution or a Civil Service rule or regulation.

B. Review of Complaint.

1. **Administrative Dismissal of Complaint.** The State Personnel Director may administratively dismiss a complaint for any of the reasons listed in rule 8-4 or for the reason that the complaint failed to allege a violation of Article 11, §5, of the Michigan Constitution or a civil service rule or regulation.
2. **Assignment of Adjudicating Officer.** If the complaint is not administratively dismissed, the State Personnel Director shall designate an adjudicating officer to investigate the complaint and issue a decision on behalf of the director.
3. **Interested Parties.** The appointing authority that rescinded the conditional offer of employment and any employee subsequently appointed to the position to which the complainant was given the conditional offer of employment may file an appearance in writing and participate as an interested party.
4. **Conduct of Investigation.**
 - a. **Summary Disposition.** If no genuine issue exists as to any material fact, the adjudicating officer may issue a final written decision based on the complaint and any written submissions or oral arguments of the parties deemed necessary.
 - b. **Investigation of Complaints.** If a genuine issue exists as to any material fact, the adjudicating officer shall further investigate the complaint. All interested parties must have a reasonable opportunity to present documentary evidence, sworn affidavits, and written arguments and respond to the submissions of other parties.

The adjudicating officer may hold conferences with the parties and independently investigate the claim. The adjudicating officer shall maintain an official record of the review.

- c. **Decision.** The adjudicating officer shall examine the record and issue a final written decision detailing the officer's findings of facts and conclusions of law. The decision must be based on the civil service rules and regulations, the technical expertise of the adjudicating officer, and the record created during the investigation. If the adjudicating officer finds that the rescission substantively violated Article 11, §5, of the Michigan Constitution or a Civil Service rule or regulation, the officer may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.

C. Appeal.

Any interested party that appeared and participated in the review proceeding, may appeal to the Civil Service Commission by filing an application for leave to appeal within 28 calendar days after the date the final decision is issued.

CONTACT

Questions regarding this regulation should be directed to the Office of the General Counsel, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; or by telephone, at (517) 373-3024.

NOTE: Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.